

<b>Finance and Administration Cabinet STANDARD PROCEDURE</b>	PAGE: 1 OF
ISSUED BY: <b>Department of Revenue, Disclosure Office</b>	
EFFECTIVE DATE: <b>August 22, 2005</b>	
PROCEDURE # <b>6.1.2 (formerly KRC procedure #1.4)</b>	
SUBJECT: <b>Confidentiality of State and Federal Information</b>	
DISTRIBUTION CODE: A,B,C,D	CONTACT: <b>Commissioner's Office (502) 564-4444 or (502) 564-4456 or Disclosure Office (502) 564-2552</b>

## I. PURPOSE

To ensure the confidentiality of state and federal tax information in the possession of the Department of Revenue, as required by Kentucky Revised Statute (KRS) [131.190](#) and [Internal Revenue Code \(IRC\) section 6103](#), it is required that all department employees be familiar with and understand the law concerning confidentiality of taxpayer information. In conjunction with this duty, each employee must complete an [Acknowledgement of Confidentiality Agreement form \(Form 6.1.2 \(a\)\)](#). The Department of Revenue will maintain a signed copy of this agreement in each employee's personnel file.

## II. THE LAW - STATE AND FEDERAL

[KRS 131.190](#) prohibits specific individuals, including Department of Revenue staff (current, former, and contract employees) from intentional unauthorized inspection or divulging tax information of any taxpayer or information regarding tax schedules, returns or reports required to be filed with the Department of Revenue. [KRS 131.190](#) is included and made a part of this standard procedure.

[KRS 131.081\(15\)](#), the Taxpayers' Bill of Rights, ensures the right of privacy for information provided by taxpayers on their Kentucky tax returns and reports, including any information attached to the returns and reports. [KRS 131.081\(15\)](#) is included and made a part of this standard procedure.

[IRC section 6103\(a\) \(2\)](#) prohibits an officer or employee of any state from disclosing any federal return or federal return information obtained by him in any manner in connection with his service as an officer or an employee. [IRC section 6103\(a\) \(2\)](#) is included and made a part of this standard procedure.

[IRC section 7213A](#), the Taxpayer Browsing Protection Act, prohibits any person from accessing or inspecting, without proper authorization, any federal return or federal return information (non-computerized taxpayer records, including hard copies of returns, as well as computerized information). [IRC section 7213A](#) is included and made a part of this standard procedure.

## III. DEFINITION OF TERMS

**A. For the purpose of state tax information, [KRS 131.010\(8\)](#) provides:**

"Return' or 'report' means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the Department of Revenue, including returns and

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reports or composites thereof which are permitted or required to be electronically transmitted.”

**B. For the purpose of federal tax information, [IRC section 6103\(b\)](#) “Definitions” provides in relevant part:**

1. RETURN - The term ‘return’ means any tax or information return, declaration of estimated tax, or claim for refund required by, or provided for or permitted under, the provisions of this title which is filed with the Secretary by, on behalf of, or with respect to any person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists which are supplemental to, or part of, the return so filed.”
2. RETURN INFORMATION - The term ‘return information’ means: a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, over assessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, or liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense, and any part of any written determination or any background file document relating to such written determination (as such terms are defined in [IRC Section 6110\(b\)](#) which is not open to the public inspection under [IRC Section 6110](#) . . . . [\(See section 6110\(b\)\)](#)).
3. TAXPAYER RETURN INFORMATION - The term ‘taxpayer’ return information’ means return information as defined in paragraph (2) which is filed with, or furnished to, the Secretary by or on behalf of the taxpayer to whom such return information relates . . . .”
4. TAXPAYER IDENTITY - The term ‘taxpayer identity’ means the name of a person with respect to whom a return is filed, his mailing address, his taxpayer identifying number . . . , or a combination thereof.”
5. INSPECTION - The terms “‘inspected’ and ‘inspection’ mean any examination of a return or return information.”
6. DISCLOSURE - The term ‘disclosure’ means the making known to any person in any manner whatever a return or return information.”

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#### **IV. SAFEGUARDING STATE AND FEDERAL INFORMATION**

Department of Revenue employees are responsible for protecting taxpayer information, either hard copy or available through electronic media. This information includes, but is not limited to, state and federal tax information and other confidential taxpayer information created, maintained, used in the normal course of business, or made available as a result of employment with the Department of Revenue.

Federal tax information must be protected in accordance with [Federal Publication 1075](#), "Tax Information Security Guidelines for Federal, State, and Local Agencies". [Publication 1075](#) is included and made apart of this standard procedure.

##### **A. State Tax Information**

Confidential state tax information is to be used by Department of Revenue personnel for official use only. Exceptions are provided in the "Authorized Release of State Tax Information" section below.

##### **1. Unauthorized Disclosure of State Returns or Return Information**

A violation of confidentiality occurs when an employee uses tax information for his or her own use, accesses or views confidential taxpayer information without an authorized "need to know", or divulges tax information to a third party, unless the third party is an authorized recipient as described in the "Authorized Release of State Tax Information" section below. For the purpose of this policy, the term divulge in reference to state tax information means to discuss tax information, verbally provide tax information, provide copies of tax information, make tax information known to any other unauthorized person, or to use or access tax information for a reason other than a "need to know".

Examples of unauthorized disclosure include the following:

- a. Providing (visually or verbally) the filing status, amount of income, or any other return information or tax related information to a friend or family member, or any other person, or a Department of Revenue employee who has no "Need to know".
- b. Providing (visually or verbally) the address or amount of income of an ex-spouse to assist with the collection of child support.
- c. Make a fellow employee, who has no "need to know" aware of tax information or show them the tax return of a famous person or any other person.

##### **2. Unauthorized Inspection of State Returns or State Return Information (Browsing)**

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A violation of confidentiality occurs when an employee accesses, views, or obtains state tax information (whether hard copy or electronic) which is not required to perform his or her job duties. Examples include the following:

- a. Looking at (browsing) information on a computer database, out of curiosity, to determine if a fellow employee or friend has filed a return or paid his or her taxes.
- b. Using addresses obtained from a Department of Revenue database or directly from a tax return for use in updating a family Christmas card list or other personal use.
- c. Viewing the tax return or tax information of a famous person or other person in which you have no "need to know".

## **B. Authorized Release of State Tax Information**

1. The confidentiality statute does not prohibit a Department of Revenue employee from exchanging information within the department in order to perform his or her job or to seek advice about legal, technical or procedural issues. Also, the confidentiality requirement does not apply to information required by law to be made publicly available. For example, property tax information required to be placed on public tax rolls is public information.
2. Exchanges of tax information are also authorized pursuant to [KRS 131.190\(2\)](#), which allows for Information Exchange Agreements. These disclosures are permitted under supervision of the Disclosure Officer only, unless otherwise specified.
3. A taxpayer or the authorized representative can obtain a copy or receive his or her own tax information when the information is requested by either the taxpayer or the authorized representative. The confidential state tax information shall be transmitted to the taxpayer or his representative via the medium requested. The request shall be written or by e-mail provided adequate taxpayer identification information is contained in the communication. Phone requests will not be recognized. Upon receipt of either a written or an e-mail request from a taxpayer or his authorized representative, and provided adequate taxpayer identification information is contained in the letter or e-mail, a Department of Revenue employee may send an e-mail containing confidential state, but not federal, taxpayer information via the Internet, if specifically requested to do so. Adequate taxpayer identification information, such as a social security number, location or mailing address information, and the taxpayer's date of birth must be included in the e-mail request. When the taxpayer or authorized representative does not specify a medium for transmission, the employee shall mail the requested information to the taxpayer or his authorized representative. The written or e-mail request must be retained, either in hard copy or electronically, as a record of the request.
4. The following notice shall be included at the bottom of all e-mails:

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“This message may contain sensitive or confidential information and is for the exclusive use of the intended recipient(s). If you are not the intended recipient(s), please note that any form of distribution, copying, forwarding or use of this communication or the information attached to it, is strictly prohibited and may be unlawful. If you have received this communication in error, please return it to the sender indicating that you received it by mistake, delete the email and destroy any copies of it. It should be expressly understood that the Finance and Administration Cabinet cannot guarantee the security of the transmission and assumes no responsibility for intentional or accidental receipt by a third party.”

5. The transmission of federal tax information via the Internet is prohibited by the Internal Revenue Services in all circumstances.
6. Before an employee discloses confidential tax information to another agency employee, the employee should be satisfied that the recipient has an official need for the confidential tax information. This is referred to as the “Need to Know” test. Each employee should make a determination, based upon his or her knowledge of the requesting employee’s job duties. In each instance, the employee should ask himself or herself this question: Does the requesting employee need the confidential tax information to perform his or her job duties? If the employee has any doubt whatsoever as to the recipient’s right to request tax information, he or she should contact his or her supervisor.

### **C. Federal Tax Information**

Federal tax information is to be used by authorized Department of Revenue personnel only. Prior approval for the use of federal tax information must be obtained from and authorized by the Department of Revenue’s Disclosure Officer. Federal tax information shall not be released to any unauthorized employee, any other government agency, or any other person, except the taxpayer himself or the taxpayer’s properly authorized representative. Federal tax information shall not be combined with Department of Revenue tax information so that the federal tax information cannot be identified as such.

#### **1. Unauthorized Disclosure of Federal Returns or Return Information**

A violation of confidentiality occurs when an employee uses tax information for their own use or divulges tax information to a third party. For the purpose of this policy, the term divulge in reference to federal tax information means to discuss tax information, verbally provide tax information, provide copies of tax information, or make tax information known to any other unauthorized person. Examples include the following:

- a. Providing (visually or verbally) the filing status, amount of income, address, or any other return or tax information to a department employee who is not an authorized user of federal information, a friend or family member, or any other person.

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- b. Providing federal information to any other government agency or anyone who is not a Department of Revenue employee authorized to receive federal information.
- c. Making a fellow employee who has no “need to know” aware of tax information or the tax return of a famous person or any other person.

## 2. Unauthorized Inspection of Federal Returns or Return Information (Browsing)

A violation of confidentiality occurs when an employee accesses, views, or obtains federal tax information (whether hard copy or electronic) which is not required to perform his or her job duties. Examples include the following:

- a. Looking at (browsing) information on federal programs such as STAX, KRCIIT, FBUSTER, etc. out of curiosity, to determine if a fellow employee or friend has filed a federal return or paid his or her taxes.
- b. Using addresses obtained from federal programs or directly from hard copy federal information for use in updating a family Christmas card list or other personal use.
- c. Viewing the tax return or tax information of a famous person or other person in which you have no “need to know”.

## V. CONFIDENTIALITY AFTER LEAVING THE DEPARTMENT OF REVENUE

The confidentiality requirement remains in effect after an employee leaves the Department of Revenue. Any tax information that was confidential during the employee’s tenure remains confidential after the employee terminates his or her employment relationship with the department. This confidentiality applies to all employees who are terminated from the Department of Revenue or who initiate termination of that employment relationship.

The ethics provision of [KRS Chapter 11A](#) governs an employee’s conduct after termination of employment with the Department of Revenue.

## VI. PENALTIES FOR CONFIDENTIALITY VIOLATIONS - STATE AND FEDERAL

### A. Unauthorized Disclosure of State Tax Information

[KRS 131.990\(2\)](#) provides criminal penalties for willful unauthorized disclosure of state return information. Upon conviction, a Department of Revenue employee may be fined up to \$1,000 and/or imprisoned for not more than one year and disqualified and removed from office or employment.

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[KRS 131.081\(14\)](#) and [KRS 446.070](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized disclosure (divulging) of any confidential tax information.

## **B. Unauthorized Inspection of State Tax Information**

[KRS 131.990\(2\)](#) provides criminal penalties for willful unauthorized inspection of state return information. Upon conviction, a Department of Revenue employee may be fined up to \$500 and/or imprisoned for not more than six months and disqualified and removed from office or employment.

[KRS 131.081\(14\)](#) and [KRS 446.070](#) provide that an employee may be subject to personal civil liability for damages associated with the unauthorized inspection of any confidential tax information.

## **C. Unauthorized Disclosure of Federal Tax Information**

[IRC section 7213A \(2\)](#) provides that it shall be unlawful for state and other employees to willfully disclose federal return or return information. Upon conviction, a Department of Revenue employee may be fined up to \$5,000 and/or imprisoned for up to five years, together with the costs of prosecution.

[IRC section 7431\(2\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized disclosure of Federal tax information.

## **D. Unauthorized Inspection of Federal Tax Information**

[IRC section 7213A \(2\)](#) provides that it shall be unlawful for state and other employees to willfully inspect federal return or return information. Upon conviction, a Department of Revenue employee shall be fined up to \$1,000 and/or imprisoned for up to one year, together with the costs of prosecution.

[IRC section 7431\(a\) \(2\)](#) provides that an employee may be subject to personal civil liability for damages associated with the unauthorized inspection of a Federal return or return information.

## **VII. DISCIPLINARY ACTION**

Under the provisions of [KRS 18A.095](#), a violation of confidentiality of state or federal tax information may be considered as unsatisfactory performance of job duties or lack of good behavior. The Department of Revenue may take disciplinary action(s) against an employee for violation of confidentiality.

Disciplinary action may include any or all of the following:

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- reprimand
- suspension
- fine
- dismissal

## **VIII. FORMS**

### [7. Forms - 6.1.2/a – Acknowledgment of Confidentiality](#)

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**NO STANDARD PROCEDURE MAY BE REVISED BY ADDENDUM, MEMORANDUM OR ANY OTHER MEANS OTHER THAN THOSE SET OUT IN STANDARD PROCEDURE #1.1 ENTITLED "CREATION, REVISION AND RESCISSION OF FINANCE AND ADMINISTRATION CABINET PROCEDURES"**

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